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 3 North Las Vegas, NV. 89031
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 6

2011 JAN -3 P 12:42

7 **IN THE UNITED STATES DISTRICT COURT**
 8 **FOR THE DISTRICT OF NEVADA**

Timothy P. Harris, Pro Se'
 Plaintiff

Case No: 2:10-cv-01662-GMN-LRL

V.

The Honorable Gloria M. Navarro

AMERICAN GENERAL FINANCIAL
 SERVICES OF AMERICA, INC.
 Defendant

Civil Rights Violation Complaint
Trial By Jury Demanded

9 **REPLY TO DEFENDANT'S OPPOSITION TO MOTION FOR SUMMARY**

10 **JUDGMENT [DOC #22]**

11 Plaintiff Timothy Harris (Consumer) is submitting this reply to Defendant AMERICAN
 12 GENERAL FINANCIAL SERVICES OF AMERICA INC. (AGFSA)'s Opposition to
 13 consumers Motion for Summary Judgment [Doc #22]. This reply is based on all the pleadings in
 14 this case so far along with this response and accompanying attachments pursuant Fed. R. Civ. P.
 15 56, hereby submits its Reply to Defendant Opposition to Plaintiff's Motion for Summary
 16 Judgement [#22].

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **1.**

19 **INRODUCTION**

20 Consumer is entitled to summary judgment as a matter of law. AGFSA has once again
 21 violated the Fair Credit Reporting Act and gone into the consumer's credit file and changed the
 22 status of their reporting to show "disputed" by their own admittance, to cover up their previous
 23 action of not marking the consumer's account, after having received a letter disputing the
 24 information, which is required by the FCRA.
 25
 26

STATEMENT OF FACTS

The consumer's complaint has NOTHING AT ALL to do with alleged debt, alleged monies owed, or alleged judgments. There is NO AMOUNT OF MONEY THAT CAN BE PURPORTED AND ALLEGED TO BE OWED BY ANY DEBTOR that releases the Defendant or any Debt Collector from liability and responsibly to follow the FCRA. The counsel for the defense has continually tried to mis-lead the court about the facts of the case. The Consumer's claims arise from Defendants violation of FCRA and has nothing to do with the issues about alleged debt owed by Defendant. These Matters of Alleged Debt are NOT ISSUES OR CLAIMS THAT ARE BEFORE THIS COURT. The main point is when consumer has disputed information that is found to exist in their credit report. The FCRA was enacted to protect the consumer's civil rights and now more than ever the FCRA has shown its necessity with all of the fraud that has been revealed in the banking and financial industry today.

The consumer disputed with AGFSA back in June of 2010 and AGFSA failed to mark the consumers account in dispute thus creating damages against the consumer. Then AGFSA failed to do an investigation as required by the FCRA and further damaged the consumer by the continuing to report false and erroneous information in the consumer's credit report. These actions, or rather a failure to act has created the basis for the consumer's complaint.

In AGFSA's Opposition to Summary Judgment [#22] they claim 15 USC 1681q does not apply. AGFSA's pull of Plaintiff's credit report during litigation has been held up by the courts not to be a permissible purpose to pull Plaintiff's credit report. AGFSA by their action have confessed guilt by correcting the credit report and marking it in dispute only after Plaintiff filed his complaint with this court and not when Plaintiff originally disputed the account. See attached Dispute Letter with proof of Service [**Exhibit A**] See Credit reports received from the reporting agencies on June 30, 2010, July 5, 2010, and July 6, 2010 [**Exhibits B, C, and D**] See Recent credit report with account marked in Dispute dated November 15, 2010 [**Exhibit E**] after Plaintiff filed Complaint. For those 4 months Defendant confesses to reporting inaccurate and erroneous information to the Credit Bureaus from which Plaintiff's damages and claims arise. THESE ARE THE ONLY ISSUE BEFORE THE COURT NOT MATTERS OF ALLEGED DEBT. IT'S THE MATTER OF HOW THEY REPORTED THE ALLEGED DEBT.

In all of AGFSA's pleadings, the counsel has continually mentioned that the consumer was unhappy about an alleged judgment against him from AGFSA. If it please the court, you will

58 notice that the defense counsel never says anything about the letter of dispute which was mailed
59 back in June of 2010, WELL BEFORE any alleged filings, in any other court EVER took place.
60 Why does the defense fail to mention these very important facts?

61 In the defense counsel's response to the motion for summary judgment, court doc. #22 on
62 page 2 lines 17-28 including footnote 3, and on page 4 lines 2 and 3, he once again talks about
63 matter that are not before this court. Defense has done nothing to show evidence of any kind that
64 AGFSA did what they were required to do by law (FCRA). Now AGFSA would have this court
65 believe that after litigation had begun that it is permissible to once again enter the consumer's
66 files and mark the accounts in dispute to cover their tracks. This in itself shows that it was done
67 willingly, knowingly, and intelligently.

68 Simply put this case is about the FACT that AGFSA violated the consumer's civil rights
69 by not marking the consumer's account in dispute when they were notified. AGFSA failed to do
70 an investigation after the letter of dispute was received which therefore violated the FCRA more.
71 Finally, AGFSA knowingly, willingly and intelligently entered into the consumer's credit reports
72 once again, by their own admittance, see Affidavit of James R. Simmerman, [Exhibit F] page 2,
73 paragraph 9, and marked the consumer's account in dispute on October 1, 2010 after litigation
74 had commenced on September 29, 2010. If the court were to allow this line of thinking, that
75 would mean that any consumers who rightfully had issues of fact about information in their
76 credit reports would then have to file a FEDERAL CASE just to have the account marked in
77 dispute.

78
79 The consumer has shown this court the certified mailings from the United States Postal
80 Service of the letter of dispute. These are self-authenticating pieces of evidence as they are done
81 by a government regulated agency and CAN NOT be disputed. The Consumer has also shown
82 the court the copies of his credit reports showing that after the letter of dispute had been
83 received, that the consumer's report still did not reflect a disputed status. The credit reporting
84 agencies are also government regulated therefore making these reports self-authenticating
85 evidence. Once again there is no way to dispute these facts of the case.

86 Consumer has given the case law that gives the private right of action to the consumer in
87 regards to the FCRA. In *Dornhecker v. Ameritech Corp.*, 99 F. Supp. 2d 918 (N.D. Ill. 2000),
88 the court agreed with the U.S. Supreme Court's analysis-set forth in *Cort v. Ash*, 95 S. Ct. 2080

(1975) for determining whether an implied private right of action exists under a statute. The four factors are: whether (1) the plaintiff is a member of a class for whose benefit the statute was enacted; (2) the legislative history indicates congressional intent, explicit or implicit, either to create or deny such a remedy; (3) implying a private remedy would frustrate the underlying purposes of the legislative scheme; and (4) the cause of action is one traditionally relegated to state law. There is an overwhelming amount of case law to support a private right of action as follows:

See, e.g. *Nelson v. Chase Manhattan Mortgage Corp.*, 282 F.3d 1057 (9th Cir.2002); *Yutesler v. Sears Roebuck & Co.*, 263 F.Supp.2d 1209 (D.Minn.2003). *Vazquez-Garcia v. Trans Union De Puerto Rico*, 222 F.Supp.2d 150, 155 (D.Puerto Rico 2002); *Hawthorne v. Citicorp Data Systems, Inc.*, 216 F.Supp.2d 45 (E.D.N.Y. 2002); *Thomasson v. Bank One, Louisiana, N.A.*, 137 F.Supp.2d 721, 723 (E.D.La.2001); *McMillan v. Experian Information Services, Inc.*, 119 F.Supp.2d 84, 86 (D.Conn.2000); *DiMezza v. First USA Bank, Inc.*, 103 F.Supp.2d 1296, 1300 (D.N.M.2000); *Dornhecker v. Ameritech Corp.*, 99 F.Supp.2d 918 (N.D.Ill.2000); *Campbell v. Baldwin*, 90 F.Supp.2d 754, 756 (E.D.Tex.2000).

As this court has been shown the consumer has disputed with both AGFSA and the Credit Reporting Agencies (CRA's) in the same time frame. If AGFSA did actually perform an investigation then it has shown no proof of it and therefore any talk of it is only hearsay and is not admissible. Once again by the Affidavit of James R. Simmerman, which is the evidence submitted by AGFSA, Mr. Simmerman only discusses knowledge about an alleged debt and alleged judgment obtained against the consumer (paragraphs 1-7). This information is completely immaterial, scandalous, and impertinent to the matters before the court and should be stricken from the docket. Mr. Simmerman never mentions anything about performing an investigation into the consumers report and only mentions about marking the consumers account in dispute on October 1, 2010 after the litigation had already commenced. Mr. Simmerman further shows his knowledge of the FCRA by his statements in paragraphs 9-11. By Mr. Simmerman's own statement he agrees that AGFSA's duty is to provide accurate and up to date information about the accounts with the CRA's. His only problem is that he said that AGFSA has complied with this and the consumer has shown that AGFSA in fact FAILED to comply and the consumer has shown proof of this by certified mailings and copies of his credit reports. This information can not be disputed as to the facts contained.

120 In regards to the defense counsels affidavit, consumer can only state that the defense has
121 completely turned everything around to make it seem as though the consumer is attempting to
122 "strong arm" AGFSA and their counsel into a settlement. The consumer does not deny sending a
123 letter to counsel but does completely deny that it was done as an intimidation tactic. Consumer
124 has shown that he is entitled to summary judgment as a fact of law and only wished again to
125 express his intent to have AGFSA come to the table to reach an agreement as to the matters of
126 this case.

127 The consumer has tried at every step possible to reach an agreement with AGFSA but
128 they have not wanted anything to do with the consumer. Based on AGFSA's unwillingness to
129 come to an agreement the consumer filed his action in court. AGFSA has continued to violate
130 the consumer's civil rights even after litigation has commenced. This has clearly been
131 evidenced. In all of the pleadings the defense has put before this court, counsel has continually
132 said that this action is about an alleged debt and alleged debt collection.

133 As per the counsels own words... "This case is about Plaintiff refusing to pay a debt, and
134 then improperly alleging foul-play when AGFSA took proper actions to collect payment of its
135 debt." Defendant Opposition to Plaintiff's Motion for Summary Judgement [#22] [Exhibit G]
136 page 2 lines 17-18) and "Despite now moving for summary judgment based upon a purported
137 violation of § 1681q of the FCRA, Plaintiff's Complaint does not mention or even allude to any
138 violation of § 1681q of the FCRA by AGFSA." [Exhibit G] page 5 line 25 and page 6 lines 2-3).
139 Please show me anywhere in the consumer's complaint where it mentions anything about this
140 case being about an alleged debt, alleged debt collections, or alleged monies owed? This is the
141 reason for the statements about filing a BAR grievance against counsel or asking for sanctions.
142 Counsel has CONTINUALLY tried to use this wording to mis-lead this court away from the
143 actual facts of the case and to this date has still been allowed to use it even though the consumer
144 has continually denied this and put on the record that these matters are not before the court.
145 Obviously the consumer is being prejudiced here and now must take some sort of action to have
146 his rights upheld. The consumer has tried to settle the matter amicable.

147 In regards to the defense counsels legal arguments in opposition to the consumer's
148 motion for summary judgment, the consumer has shown that all the evidence needed to grant the
149 motion for summary judgment is in existence. The arguments that defense counsel has put
150 forward are all just a bunch of legal gibberish to once again steer the court away from the facts of

151 the case. Counsel would have you believe that furnishers of information are on a "one way"
152 street and therefore can not be held accountable. Consumer will remind the court of this simple
153 fact. If a consumer disputes an account and a furnisher actually marks the account as it is
154 supposed to and then performs an investigation like it is supposed to...when information is found
155 incorrect it has a duty to correct that information. This shows the actual "two way" street that
156 these furnishers exist on, on a daily basis.

157 The court must ask itself these questions:

- 158 1. Has the consumer proved by way of admissible evidence that his credit reports were
159 disputed with AGFSA and the CRA's? The answer is obviously yes by way of the
160 certified mailings
- 161 2. Has the consumer shown that there is no evidence to the contrary that the disputed
162 accounts were marked accordingly until after litigation had commenced? Once again the
163 answer is yes by way of the credit reports and by statements from a high officer of
164 AGFSA itself.
- 165 3. Has the consumer shown that AGFSA has knowingly, willingly, and intelligently gone
166 back into the consumers reports and marked them in dispute to cover their obvious
167 inaction of the past with the intent to conceal their behavior? Again the answer is yes.
168 By the statements of James R. Simmerman who admits that he knows the law and I quote
169 "As part of my job duties, I have the ability to, and regularly do access and review the
170 account records" and "AGFSA's legal department learned of the present lawsuit late in
171 the afternoon of September 30, 2010. The following day October 1, 2010 the Las Vegas
172 Service Center branch was notified by the legal department of the fact that Plaintiff had
173 filed a lawsuit, and in accordance with AFGFSA's litigation policies and procedures, the
174 branch flagged Plaintiff's account as "disputed"" and lastly "AGFSA is required to
175 provide accurate, up-to-date information about account status to the consumer reporting
176 agencies" These statements clearly show that AGFSA knows the law and they violated
177 it, so then they maliciously tried to cover up their violation by another violation.

178 The answer to all these questions is an absolute yes and therefore consumer should be granted
179 this judgment based on the facts before this court. The case law that allows for this is as follows:

Rice v. Montgomery Ward & Co., Inc. 450 F. Supp. 688, 670-72 (M.D. N.C. 1978) (Defendant violates FCRA if it obtains a consumer report on Plaintiff after Plaintiff institutes an action against defendant. Such an inquiry is impermissible.);

Bils v. Nixon, Hargrave, Devans & Doyle, 880 P.2d 743 (Ariz. App. 1994) (improper to get report to discover information which might be used in litigation); Duncan v. Handmaker, 149 F.3d 424, 426-28 (6th Cir. 1998) (no legitimate business needs to obtain report to prepare for litigation); Bakker v. Mckinnon, 152 F.3d 1007, 1011-12 (8th Cir. 1998) (same);

Auriemma v. Montgomery, 860 f.2d 273, 279, 280-281 (7th Cir. 1998) (extra-judicial investigation by attorneys improper; no privilege);

Mone v. Dranow, 945 F.2d 306, 308 (9th Cir. 1991) (obtaining credit report to investigate for purposes of litigation improper);

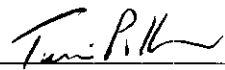
Boothe v. TRW Credit Data, 557 F. Supp. 66, 70-71 (S.D.N.Y. 1982); Rylewicz v. Beaton Services, Ltd., 698 F. Supp.. 1391, 1400 n. 10 (N.D. Ill. 1988), aff'd 888F.2d 1175, 1181 (7th Cir. 1989); Houghton v. N.J. Maunfacturer's Ins. Co., 795 F.2d 1144, 1149 (3d Cir. 1986) (obtaining report after litigation for use in litigation improper).

None of the legal arguments that defense counsel has put up in his opposition have any merit whatsoever. None of these facts can be disputed and the facts that the defense has put forth have actually been used to bolster the facts that were put forth by the consumer. By AGFSA's own admittance in AFFIDAVIT format, the Plaintiff now has a SWORN CONFESSION by the Defendant's to not having marked the Plaintiff's account in dispute and therefore correcting their actions once litigation had commenced. If the information was correct then why does AGFSA now correctly mark the account? This court should grant Plaintiff's Motion For Summary Judgment based on all the facts before the court. If this judgment is denied due to this cause not being on the original complaint then plaintiff requests the ability to be able to amend his complaint to add this newly founded violation as opposed to filing a separate case and then filing a motion to join the two cases together therefore wasting more of the courts time.

The Consumer has shown in his complaint, and with the sworn confession of guilt by the Defendants in affidavit format [Exhibit F] admitted to reporting inaccurate and erroneous information from June 2010 to October 2010, and also that they pulled Plaintiff's credit report while in litigation. Plaintiff has alleged a proper, and cognizable cause of action against AGFSA. AGFSA cannot overcome this fact due to the fact they prepared that Affidavit and All of Plaintiff's Evidence is Self Authenticating Pursuant to FROE 901 & 902. Plaintiff respectfully requests the following:

- 1- Grant Plaintiff's Motion for Summary Judgment.
- 2- Deny Defendants motion to Dismiss [#6] with prejudice.

Respectfully submitted this 3rd day of January, 2011.


Timothy Harris
4005 Cherokee Rose Ave.
North Las Vegas, NV 89031
702-371-3658
extremeps1@cox.net

CERTIFICATE OF SERVICE

I, the Plaintiff, Timothy Harris, does hereby certify that a copy of this Notice To District Judge was sent to the Defendant American General Financial Services Of America, Inc. through their attorney of record David W. Dachelet, Esq., Nevada Bar No. 6615, 300 South Fourth Street, Suite 1400, Las Vegas, Nevada 89101 for the purpose of satisfying the requirement for Notice and Service and was sent via the United States Postal Service pursuant to Federal Rules of Civil Procedure 4 (c) (2) (c) (i). This will also be available to any and all PACER ECF participants and will serve as Notice and Service.



Timothy P. Harris
4005 Cherokee Rose Ave.
North Las Vegas, NV. 89031
702-371-3658
extremeps1@cox.net

EXHIBIT A

EXHIBIT A

LETTER OF DISPUTE:

JUNE 17, 2010

Timothy Paul Harris
4005 Cherokee Rose Avenue
North Las Vegas, Nevada, 89031

Certified Mail # 7009 3410 0001 0346 7841 Return Receipt Requested

AMERICAN GENERAL FINANCE
P.O. BOX 54290
LOS ANGELES, CA 90054-0290

To Whom It May Concern:

This is a letter of dispute.

I recently pulled my credit report and found AMERICAN GENERAL FINANCE reporting derogatory information in my credit report.

I do not agree with the balance on the account and dispute this.

By: Timothy P. Harris

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)
 For delivery information visit our website at www.usps.com

LOS ANGELES CA 90054

Postage	\$	\$0.44	0094
Certified Fee		\$2.80	11
Return Receipt Fee (Endorsement Required)		\$2.30	0102
Restricted Delivery Fee (Endorsement Required)		\$0.00	LI NF
Total Postage & Fees	\$	\$5.54	06/17/2010

Sent To American General Finance
 Street, Apt. No. or PO Box No. P.O. Box 54290
 City, State, ZIP+4 Los Angeles, CA 90054-0290
 PS Form 3811, February 2004 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

American General Finance
P.O. Box 54290
Los Angeles, CA 90054-0290

2. Article Number

(Transfer from service label)

7009 3410 0001 0346 7841

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-154

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

CESAR S.

C. Date of Delivery

JUN 20 2010

- D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)
 For delivery information visit our website at www.usps.com

ALLEN TX 75013

Postage	\$	\$0.44	0094
Certified Fee		\$2.80	09
Return Receipt Fee (Endorsement Required)		\$2.30	21
Restricted Delivery Fee (Endorsement Required)		\$0.00	JUN 21 2010
Total Postage & Fees	\$	\$5.54	06/21/2010

Sent To Experian - AG
 Street, Apt. No. or PO Box No. P.O. Box 2002
 City, State, ZIP+4 Allen, TX 75013
 PS Form 3811, February 2004 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Experian
P.O. Box 2002
Allen, TX 75013

2. Article Number

(Transfer from service label)

7009 3410 0001 0346 8053

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-154

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

EXPERIAN PARKWAY

C. Date of Delivery

JUN 22 2010

- D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

U.S. Postal Service

CERTIFIED MAIL RECEIPT

(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.gov

ATLANTA GA 30374

Postage	\$	\$0.44	0094
Certified Fee		\$2.80	09
Return Receipt Fee (Endorsement Required)		\$2.30	He
Restricted Delivery Fee (Endorsement Required)		\$0.00	
Total Postage & Fees	\$	\$5.54	06/21/2010

Sent To: *EquiFax - AG*
 Street, Apt. No., or PO Box No.: *P.O. Box 740241*
 City, State, ZIP+4: *Atlanta GA 30374*

PS Form 3800, August 2005 See Reverse

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

EquiFax
P.O. Box 740241
Atlanta, GA 30374

2. Article Number

(Transfer from service label)

7009 3410 0001 0346 8091

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

JUN 24 2010

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

3. Service Type

☐ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

U.S. Postal Service

CERTIFIED MAIL RECEIPT

(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.gov

CHESTER PA 19022

Postage	\$	\$0.44	0094
Certified Fee		\$2.80	09
Return Receipt Fee (Endorsement Required)		\$2.30	Pos
Restricted Delivery Fee (Endorsement Required)		\$0.00	He
Total Postage & Fees	\$	\$5.54	06/21/2010

Sent To: *Trans Union - AG*
 Street, Apt. No., or PO Box No.: *P.O. Box 1000*
 City, State, ZIP+4: *Chester, PA 19022*

PS Form 3800, August 2005 See Reverse

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Trans Union
P.O. Box 1000
Chester, PA 19022

2. Article Number

(Transfer from service label)

7009 3410 0001 0346 8060

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

TransUnion LLC

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

JUN 24 2010

3. Service Type

☐ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

EXHIBIT B

EXHIBIT B



Prepared for
TIMOTHY PAUL HARRIS
Report number
1070-6058-87

Report date Date Pulled
June 30, 2010
www.experian.com/disputes
PO BOX 9701, Allen, TX 75013
Page 4 of 18

Accounts in good standing

These items may stay on your credit report for as long as they are open. Once an account is closed or paid off it may continue to appear on your report for up to ten years.

Credit items

AMERICAN EDUCATION

SVCS/NCT

Date opened	Date of status	Type	Responsibility	Credit limit or original amount	Recent balance	Status: Open/Never late.
Jun 2007	May 2010	Installment	Signer with credit	High balance	as of May 2010	Address identification number: 599674340
Reported since Aug 2007	Last reported May 2010	Terms 24 Months	Individual	High balance		
(800) 233-0577		Monthly payment \$225				

Partial account number

1747379151PA0....
See History of account balances for additional information.

AMERICAN GENERAL

FINANCE

Date opened	Date of status	Type	Responsibility	Credit limit or original amount	Recent balance	Status: Open/Never late.
Feb 2010	Jun 2010	Installment	Individual	\$4,494	\$4,178 as of Jun 2010	Address identification number: 599674340
Reported since Feb 2010	Last reported Jun 2010	Terms 24 Months	Individual	High balance		
LAS VEGAS NV 89108		Monthly payment \$236				

No phone number available

Partial account number

210118201187....
See History of account balances for additional information.

BAC HOME

LOANS/COUNTRYWIDE

Date opened	Date of status	Type	Responsibility	Credit limit or original amount	Recent balance	Status: Open/Never late.
Aug 2009	Jun 2010	Message	Individual	High balance	as of Jun 2010	Address identification number: 599674340
Reported since Aug 2009	Last reported Jun 2010	Terms	Individual	High balance		
SIMI VALLEY CA 93065		Monthly payment \$236				

(800) 669-6607

Partial account number

2267....

See History of account balances for additional information.

0042251074

L-677-10453-0209000



EXHIBIT C

EXHIBIT C

Account Name	Account Number	Date Opened	Balance	Date Reported	Past Due	Account Status	Credit Limit
Date Closed:	08/2009			Type of Loan:		VA Real Estate Mortgage (Veteran's Administration)	
Date of First Delinquency:	N/A						
Comments:							

81-Month Payment History

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2009				*	*	*	*					

[Back to Top](#)

Installment Accounts

Installment accounts are credit accounts in which the amount of the payment and the number of payments are predetermined or fixed, such as a car loan.

Open Accounts

Account Name	Account Number	Date Opened	Balance	Date Reported	Past Due	Account Status	Credit Limit
AMERICAN GENERAL FIN	210118201187XXXX	02/2010	\$4,178	06/2010	\$0	PAYS AS AGREED	

AMERICAN GENERAL FINANCE

4825 S Rainbow Blvd Ste 208
Las Vegas, NV-891034748

Account Number:	210118201187XXXX	Current Status:	PAYS AS AGREED
Account Owner:	Individual Account	High Credit:	\$4,494
Type of Account <u>7</u> :	Installment	Credit Limit:	
Term Duration:	24 Months	Terms Frequency:	
Date Opened:	02/2010	Balance:	\$4,178
Date Reported:	06/2010	Amount Past Due:	\$0
Date of Last Payment:	05/2010	Actual Payment Amount:	\$236
Scheduled Payment Amount:	\$236	Date of Last Activity:	05/2010
Date Major Delinquency First Reported:		Months Reviewed:	3
Creditor Classification:		Activity Description:	N/A
Charge Off Amount:		Deferred Payment Start Date:	
Balloon Payment Amount:		Balloon Payment Date:	
Date Closed:		Type of Loan:	Secured By Household Goods/Collateral
Date of First Delinquency:	N/A		
Comments:			



Date Pulled
↓

EXHIBIT D

EXHIBIT D

To dispute online go to: <http://transunion.com/disputeonline>

EXHIBIT E

EXHIBIT E

Current:	1	1	1
Closed:	0	0	0
DEROGATORY SUMMARY:			
Inquiries:	1	1	1
Public Records:	1	1	1
Collections Accounts:	1	1	1
Current Delinquencies:	1	1	1
Prior Delinquencies:	0	0	0

Account History

Below is information on any accounts you may have opened in the past. Accounts that are paid as agreed can remain on your report for up to 10 years from the date of last activity. Typically, a consumer reporting agency will not report negative information that is more than seven years old, or bankruptcies that are more than 10 years old.

DEROGATORY

	Experian	Equifax	TransUnion
Account Name:			AMERICAN GENERAL FINAN
Account Number:			000000
Account Type:			Installment
Account Status:			Open
Monthly Payment:			236
Date Opened:			02/2010
Balance:			4,068
Terms:			72
High Balance:			12,000
Limit:			-
Past Due:			0
Payment Status:			Current
Comments:			Unsecured

24-Month Payment History

Date:	Nov 08	Dec 08	Jan 09	Feb 09	Mar 09	Apr 09	May 09	Jun 09	Jul 09	Aug 09	Sep 09	Oct 09	Nov 09	Dec 09	Jan 10	Feb 10	Mar 10	Apr 10	May 10	Jun 10	Jul 10	Aug 10	Sep 10	Oct 10
-------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------

Experian:

Equifax:

TransUnion:

OK OK

AMERICAN GENERAL FINAN

	Experian	Equifax	TransUnion
Account Name:	AMERICAN GENERAL FINAN	AMGNL	AMER GEN FIN
Account Number:	210178801187XXXX	210118201187XXXX	210178801187XXXX
Account Type:	Installment	Installment	Installment
Account Status:	Open	Open	Open
Monthly Payment:	\$236	\$236	\$236
Date Opened:	02/2010	02/2010	02/2010
Balance:	\$4,068	\$4,178	\$4,068

Terms:	24	24
High Balance:	\$4,494	\$4,494
Limit:	-	-
Past Due:	\$959	\$0
Payment Status:	120 Days Late	Current
Comments:	Account in dispute - reported by subscriber (FCBA) Account information disputed by customer	Secured By Household Goods & Other Collateral Account information disputed by consumer

24-Month Payment History

Date:	Nov 08	Dec 08	Jan 09	Feb 09	Mar 09	Apr 09	May 09	Jun 09	Jul 09	Aug 09	Sep 09	Oct 09	Nov 09	Dec 09	Jan 10	Feb 10	Mar 10	Apr 10	May 10	Jun 10	Jul 10	Aug 10	Sep 10	Oct 10	
Experian:																	OK	OK	OK	OK	OK	OK	60	90	120
Equifax:																	OK	OK	OK	OK					
TransUnion:																	OK	OK	OK	ND	OK	OK	60	90	120

~~HOBG BANK~~

	Experian	Equifax	TransUnion
Account Name:	HOBG BANK	HOBG BANK	HOBG BANK
Account Number:	0070019000	250070041000	520035001000
Account Type:	Revolving	Revolving	Revolving
Account Status:	Open	Open	Open
Monthly Payment:	\$15	\$15	\$15
Date Opened:	01/20/10	01/20/10	04/20/10
Balance:	\$174	\$174	\$174
Terms:			0
High Balance:	\$400	-	\$400
Limit:	\$000	\$000	\$000
Past Due:	-	-	\$0
Payment Status:	Current	Current	Current
Comments:			Credit Card

24-Month Payment History

Date:	Nov 08	Dec 08	Jan 09	Feb 09	Mar 09	Apr 09	May 09	Jun 09	Jul 09	Aug 09	Sep 09	Oct 09	Nov 09	Dec 09	Jan 10	Feb 10	Mar 10	Apr 10	May 10	Jun 10	Jul 10	Aug 10	Sep 10	Oct 10	
Experian:																	OK	OK	OK	OK	OK	OK	OK	OK	OK
Equifax:																	OK	OK	OK	OK	OK	OK	OK	OK	OK
TransUnion:																	OK	OK	OK	OK	OK	OK	OK	OK	OK

~~PREFERRED CREDIT INC~~

	Experian	Equifax	TransUnion
Account Name:	PREFERRED CREDIT INC	PREFERRED CREDIT INC	PREFERRED CREDIT INC
Account Number:	001000	001000	001000
Account Type:	Installment	Installment	Installment
Account Status:	Open	Open	Open
Monthly Payment:	\$00	\$00	\$00
Date Opened:	00/00/00	00/00/00	00/00/00
Balance:	\$4,001	\$4,001	\$4,001

EXHIBIT F

EXHIBIT F

1 DAVID W. DACHELET, ESQ.
Nevada Bar No. 6615
2 FENNEMORE CRAIG, P.C.
300 South Fourth Street, Suite 1400
3 Las Vegas, Nevada 89101
Telephone: 702.692.8000
4 Facsimile: 702.692.8099
e-mail: ddachele@fclaw.com

5 *Attorneys for Defendant American General Financial Services of America, Inc.*

6 **UNITED STATES DISTRICT COURT**

7 **DISTRICT OF NEVADA**

8 TIMOTHY P. HARRIS, Pro Se,
9 Plaintiff,

Case No.: 2:10-cv-01662-GMN-LRL

10 vs.

11 AMERICAN GENERAL FINANCIAL
12 SERVICES LLC,

13 Defendant.

**AFFIDAVIT OF JAMES R.
SIMMERMAN IN SUPPORT OF
DEFENDANT'S OPPOSITION TO
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

14 I, JAMES R. SIMMERMAN, being first duly sworn on oath, depose and say the
15 following:

16 1. I am a Vice President, Director of Operations, with American General
17 Financial Services of America, Inc., ("AGFSA") and I am making this Affidavit in
18 support of Defendant's Opposition to Plaintiff's Motion for Summary Judgment in the
19 above captioned matter.

20 2. I have overall responsibility for business matters which may impact, or have
21 the potential to impact, the operations of AGFSA within my Division, which includes
22 most of the branches in eight states, including those related to the Service Center branch
23 in Las Vegas, Nevada, at which Plaintiff's account is situated.

24 3. As part of my job duties, I have the ability to, and regularly do, access and
25 review the account records for individual borrowers, including Plaintiff. AGFSA's
26 account records are made by persons with knowledge of the matters they record, or from
27 information supplied by persons with such knowledge, and are made at or about the time
28

FENNEMORE CRAIG, P.C.
LAS VEGAS

1 of the event recorded. It is AGFSA's practice to maintain such files and documents in the
2 regular course of its business.

3 4. AGFSA has established policies and procedures regarding the maintenance
4 of account records. Employees are specifically instructed, trained and required to
5 maintain complete and accurate account records, and employees are disciplined, should
6 they fail to abide by AGFSA's policies and procedures regarding recordation and
7 maintenance of account records.

8 5. I have reviewed Plaintiff's records on file with AGFSA and have personal
9 knowledge of the matters contained herein, except those matters identified as being made
10 on information and belief, and would, if called upon to do so, competently testify as to the
11 matters set forth herein.

12 6. AGFSA loaned Plaintiff money, after which Plaintiff defaulted on the loan
13 amount. AGFSA is not a third party debt collector in this case, but is the first-party lender
14 and is in privity of contract with Plaintiff on the underlying debt.

15 7. Due to Plaintiff's default on the loan, it was ultimately necessary as a last
16 resort, having exhausted all efforts to reach out to Plaintiff to resolve the default, to pursue
17 and obtain a judgment against Plaintiff in the amount of \$4,315.27, in Las Vegas Justice
18 Court.

19 8. On September 27, 2010, Plaintiff filed a lawsuit against AGFSA alleging
20 violations of specific sections of the Federal Credit Reporting Act and Telephone
21 Consumer Protection Act.

22 9. AGFSA's legal department learned of the existence of the present lawsuit
23 late in the afternoon of September 30, 2010. The following day, on October 1, 2010, the
24 Las Vegas Service Center branch was notified by the legal department of the fact that
25 Plaintiff had filed a lawsuit, and in accordance with AGFSA's litigation policies and
26 procedures, the branch flagged Plaintiff's account as in "dispute."
27
28

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LAS VEGAS

1
2 10. AGFSA is required to provide accurate, up-to-date information about
3 account status to the consumer reporting agencies, and it complied with that duty in this
4 case.

5 11. Once an account is flagged as in "dispute", this ensures that any AGFSA
6 employee reviewing the account is made aware that no customer contact or action can
7 occur with respect to the account without the express approval of AGFSA's legal
8 department. One purpose of this action is to ensure that parties do not receive collection
9 letters or phone calls after litigation is filed, as they are typically represented by counsel at
10 that point.

11 12. The flagging of Plaintiff's account as in "dispute" was done in compliance
12 with internal policies and all applicable laws, and was not done punitively, under false
13 pretenses or for any improper purpose.

14 13. I am competent to testify to the facts stated herein.

15 FURTHER, YOUR AFFIANT SAYETH NAUGHT.

16 DATED this 15th day of DECEMBER, 2010.

17 

18 James R. Simmerman
19 Vice President, Director of
20 Operations, American General
Financial Services of America, Inc.

21 SUBSCRIBED and SWORN to before
22 me this 15th day of December, 2010.

23 

24 NOTARY PUBLIC in and for
25 Said County and State

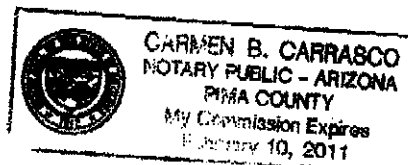


EXHIBIT G

EXHIBIT G

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5 *Attorneys for Defendant*
6 *American General Financial*
7 *Services of America, Inc.*

8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 TIMOTHY P. HARRIS, Pro Se,
11 Plaintiff,

12 vs.

13 AMERICAN GENERAL FINANCIAL
SERVICES LLC,
14 Defendant.

Case No.: 2:10-cv-01662-GMN-LRL

**DEFENDANT'S OPPOSITION
TO PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

15
16 Defendant AMERICAN GENERAL FINANCIAL SERVICES OF AMERICA, INC.
17 ("AGFSA"), erroneously sued as AMERICAN GENERAL FINANCIAL SERVICES, LLC, by
18 and through its undersigned counsel, pursuant to Fed. R. Civ. P. 56, hereby submits its
19 Opposition to Plaintiff's Motion for Summary Judgment (#15) ("Motion").

20 AGFSA bases this Opposition on Fed. R. Civ. P. 56, the Memorandum of Points and
21 Authorities that follows, the exhibits attached hereto, the papers and pleadings already on file
22 herein, and any oral argument the Court may permit at the hearing of this matter, all of

23 ///

24 ///

25 ///

1
2 which demonstrate that Plaintiff's baseless Motion for Summary Judgment should be denied.

3 DATED this 16th day of December, 2010.

4 FENNEMORE CRAIG, P.C.

5
6 By: /s/ David W. Dachelet

7 DAVID W. DACHELET

8 Nevada Bar No. 6615

9 300 S. Fourth Street, Suite 1400

10 Las Vegas, Nevada 89101

11 *Attorneys for Defendant American General*
12 *Financial Services of America, Inc.*

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **I.**

15 **INTRODUCTION**

16 Plaintiff is not entitled to summary judgment in this matter, no matter how many rogue
17 pleadings he files in support of his Motion.¹ Indeed, Plaintiff shows no signs of slowing his
18 penchant for filing a multitude of self-styled motions.² Despite Plaintiff's efforts to obfuscate the
19 real issues at hand, he cannot escape the fact that his current motion for summary judgment relies
20 on a new and previously undisclosed statutory remedy, which is simply inapplicable under the
21 facts of this case.

22 In his newest Motion, Plaintiff erroneously alleges that AGFSA violated § 1681q of the
23 Fair Credit Reporting Act ("FCRA"). That section states "[a]ny person who knowingly and
24 willfully obtains information on a consumer from a consumer reporting agency under false
25 pretenses shall be fined under title 18, United States Code, imprisoned for not more than 2 years,

26 ¹ In "support" of this Motion alone, Plaintiff has contemporaneously filed a "Notice of Motion and Motion
27 for Summary Judgment," a "Memorandum of Points and Authorities in Support of Plaintiff's [sic] Motion for
28 Summary Judgment," a "Separate Statement of Undisputed Material Facts in Support of Motion for Summary
Judgment," a "Plaintiff's Request for Judicial Notice in Support of Motion for Summary Judgment," an "Affidavit of
Timothy Harris Submitted in Support of Plaintiff's Motion for Summary Judgment" (hereinafter, "Harris MSJ Aff."),
and a host of non-authenticated exhibits.

² In fact, Plaintiff filed two motions on Tuesday, December 7, 2010, a "Plaintiff's Request for Judicial
Notice" and a "Plaintiff's Notice to District Judge Gloria M. Navarro." Additionally, on Friday, December 10, 2010,
Plaintiff filed two more documents with the Court, a "Motion to Vacate Order to Stay Discovery" and a similarly
self-styled "Plaintiff's Affidavit of Non-Consent."

1
2 or both.” 15 USC § 1681q. For this section of the FCRA to apply, which it does not, AGFSA
3 would have had to obtain Mr. Harris’s credit information under “false pretenses.” Section 1681q
4 cannot be applied against AGFSA because AGFSA is a *reporting* entity (i.e., a “furnisher of
5 information”, under the FCRA) to the credit reporting agencies, and never *obtained* his credit
6 information, much less did it do so under some misleading guise. Further, Plaintiff’s § 1681q
7 claim is not properly before this Court because Plaintiff never alleged a violation of this section
8 of the FCRA in his Complaint. Finally, this Court should not allow any amendment of Plaintiff’s
9 Complaint to include § 1681q because the claim is inapplicable to the facts at hand.

10 In sum, Plaintiff’s Motion, like every motion that Plaintiff has filed in this case, fails to
11 allege a proper, cognizable cause of action against AGFSA. Consequently, AGFSA respectfully
12 requests that this Court deny Plaintiff’s Motion for Summary Judgment for a violation of §
13 1681q, and proceed to enter an order granting AGFSA’s Motion to Dismiss [Doc. 6] this suit with
14 prejudice.

15 II.

16 STATEMENT OF FACTS

17 This case is about Plaintiff refusing to pay a debt, and then improperly alleging foul-play
18 when AGFSA took proper actions to collect payment of its debt. It is undisputed that the only
19 reason AGFSA had any contact with Plaintiff is his default, in 2010, on a loan (the “Loan”) with
20 AGFSA. After Plaintiff defaulted on the Loan, he apparently became dissatisfied with the
21 information reported in his consumer credit reports, and also objected to telephone calls he
22 allegedly received on his cellular telephone from AGFSA.

23 On August 19, 2010, AGFSA filed a complaint against Plaintiff in the Las Vegas Justice
24 Court to collect payment on the Loan that Plaintiff had obtained from AGFSA. *See* a certified
25 copy of AGFSA’s Affidavit of Complaint filed in the Justice Court, attached hereto as **Exhibit**
26 **A.**³ On September 29, 2010, due to Plaintiff’s default, the Justice Court rendered a Judgment in

27
28 ³ AGFSA respectfully requests that the Court consider the attached exhibits containing the Justice Court’s
certified copies of the pleadings in the underlying Justice Court case under the doctrine of judicial notice. *See* 2
James Wm. Moore et al., *Moore’s Federal Practice* § 12.34[2] (3d ed. 1999).

1
2 favor of AGFSA in the amount of \$4,315.27. *See* a certified copy of the Justice Court's
3 Judgment, attached hereto as **Exhibit B**.

4 Meanwhile, on September 27, 2010, Plaintiff filed a Complaint against AGFSA in the
5 instant action. *See* Complaint, attached hereto as **Exhibit C**. Per the Complaint, the only issues
6 before the Court in this case are whether AGFSA violated §§ 1681s-2(a) and 1681s-2(b) of the
7 FCRA and §§ 227(b)(1) or 227(d) of the Telephone Consumer Protection Act ("TCPA") with
8 respect to the information reported in Plaintiff's consumer credit reports and AGFSA's alleged
9 telephone calls to Plaintiff. *Id.*⁴ Yet now, Plaintiff seeks summary judgment against AGFSA for
10 an alleged violation of § 1681q, a totally new allegation not contained in his Complaint. *See*
11 Exhibit C, generally.

12 AGFSA specifically disputes Plaintiff's "undisputed" material facts as set forth in support
13 of his Motion for Summary Judgment. *See* Plaintiff's Separate Statement of Undisputed Material
14 Facts in Support of Motion for Summary Judgment, ("Plaintiff's UMF") at p. 1.⁵ Contrary to
15 Plaintiff's claims that AGFSA pulled Plaintiff's credit as some sort of punitive tactic, AGFSA
16 only placed a disputed balance flag on his account on October 1, 2010, as a result of Plaintiff's
17 filing of this lawsuit. *See* Aff. of James R. Simmerman, ¶ 6, attached hereto as **Exhibit D**; *cf.*
18 Plaintiff's UMF, ¶ 4. In short, Plaintiff caused his own alleged injury of a "disputed" credit status
19 when he filed suit against AGFSA. *Id.*

20 Notably, Plaintiff is not content with seeking civil damages against AGFSA. Instead, he
21 is pursuing criminal sanctions under § 1681q, apparently seeking a two-year prison sentence
22 against his former lender. *See* § 1681q. Plaintiff's extortionary intent has been demonstrated by
23 his use of correspondence demanding settlement in the face of criminal sanctions, and allusions to
24 possible Nevada State Bar complaints against AGFSA's attorneys. *See* the Affidavit of David W.

25
26 ⁴ AGFSA notes that each of these issues is separately disputed in its pending Motion to Dismiss (Doc. 6).

27 ⁵ Plaintiff also filed an Affidavit in support of his Motion for Summary Judgment ("Harris MSJ Aff."),
28 which recycles the same arguments from Plaintiff's UMF, alleging AGFSA changed Plaintiff's credit status under
"false pretenses" and without any "permissible purpose." *See* Harris MSJ Aff., ¶¶ 3, 8. In the interest of judicial
economy, AGFSA will cite to Plaintiff's UMF for the purposes of refuting these "facts" but expressly incorporates
these objections against these same statements found in the Harris MSJ Aff.

Dachelet, attached hereto as **Exhibit E**.

III.

LEGAL ARGUMENT

Plaintiff's Motion for Summary Judgment is both factually and legally deficient under Fed. R. Civ. P. 56.⁶ The purpose of summary judgment is to avoid unnecessary trials when there is no dispute as to the facts before the court. *Northwest Motorcycle Ass'n v. U.S. Dep't of Agric.*, 18 F.3d 1468, 1471 (9th Cir. 1994). Summary judgment is only appropriate where "the pleadings, the discovery and disclosure materials on file, and any affidavits show there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." *See Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986). Where reasonable minds could differ on the material facts at issue, summary judgment is not appropriate. *See Warren v. City of Carlsbad*, 58 F.3d 439, 441 (9th Cir. 1995), *cert. denied*, 516 U.S. 1171 (1996).

The moving party bears the burden of informing the Court of the basis for their motion, together with evidence demonstrating the absence of any genuine issue of material fact. *See Celotex*, 477 U.S. at 323. Once the moving party has met its burden, the non-moving party may show, through affidavits or admissible discovery material, that a valid dispute still exists. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The court must view the evidence and the inferences arising therefrom in the light most favorable to the nonmoving party. *Bagdadi v. Nazar*, 84 F.3d 1194, 1197 (9th Cir. 1996). Where reasonable minds could differ on the material facts at issue, however, summary judgment should not be granted. *Warren*, 58 F.3d at 441.

A. Plaintiff's Motion Should be Denied Because it is Premised upon Newly Asserted Claims Not Included in his Complaint.

Despite now moving for summary judgment based upon a purported violation of § 1681q

⁶ *Pro se* litigants in a civil case should **not** be treated more favorably than parties with attorneys of record. *Jacobsen v. Filler*, 790 F.2d 1362, 1364 (9th Cir. 1986) (upholding summary judgment against *pro se* plaintiff in civil rights case where plaintiff failed to file responsive material in opposition of summary judgment motion). *Pro se* litigants must follow the same rules of procedure that govern all litigants. *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987).

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2 of the FCRA, Plaintiff's Complaint does not mention or even allude to any violation of § 1681q
3 of the FCRA by AGFSA. *See* Exhibit C at p. 2, lines 47-50 (alleging a violation of § 1681s-2); p.
4 4, lines 102-04 (alleging violations of § 1681s-2(a-b)). As a result of Plaintiff's failure to
5 properly plead a violation of § 1681q, AGFSA has never received fair notice that Plaintiff was
6 pursuing this claim under this particular statute. Under Fed. R. Civ. P. 8(a)(2), Plaintiff's
7 Complaint must "give the defendant fair notice of what the plaintiff's claim is and the grounds
8 upon which it rests." *Pickern v. Pier 1 Imps. (US), Inc.*, 457 F.3d 963, 968 (9th Cir. 2006). Here,
9 there was no fair notice because Plaintiff only sued on other, specific portions of the FCRA, and
10 AGFSA cannot be deemed to have notice of unasserted claims.

11 Plaintiff's transparent attempt to raise a new claim or argument that AGFSA violated §
12 1681q of the FCRA for the first time in his Motion for Summary Judgment is, in and of itself,
13 grounds for denial. *Shamburger v. Roy*, 1995 U.S. App. LEXIS 6011, at *2 n.1 (9th Cir. Dec.
14 13, 1994) (noting that the district court did not err in refusing to consider arguments raised for the
15 first time in the pro se plaintiff's opposition to defendants' motion for summary judgment).
16 Plaintiff cannot obtain summary judgment on a novel argument that has never been briefed,
17 particularly where the requisite elements of that cause of action have never been pleaded. *See Lee*
18 *v. NNAMHS*, 2009 U.S. Dist. LEXIS 86705, at *10 n.5 (D. Nev. Sept. 21, 2009) (remarking, in a
19 case involving a pro se plaintiff, that "[i]t is not appropriate for Plaintiff to assert new allegations
20 outside the scope of the complaint" in summary judgment briefing); *Matthews v. Endel*, 2007
21 U.S. Dist. LEXIS 98168, at *6 n.3 (D. Nev. Sept. 12, 2007) (disregarding new allegations raised
22 in the pro se plaintiff's three responses to the defendants' motion for summary judgment).

23 In short, summary judgment on any putative § 1681q claim is improper because the only
24 issues that Plaintiff has actually brought before the Court in this case are whether AGFSA
25 violated §§ 1681s-2(a) and 1681s-2(b) of the FCRA and §§ 227(b)(1) and 227(d) of the
26 Telephone Consumer Protection Act ("TCPA"). Thus, the Court should disregard Plaintiff's new
27 § 1681q claims as irrelevant and outside the scope of Plaintiff's Complaint.

28 ///

B. In any case, Plaintiff Cannot Demonstrate That AGFSA violated § 1681q of the FCRA and, as such, the Motion Should be Denied.

Even if Plaintiff had alleged a violation of § 1681q in his Complaint, summary judgment is nevertheless inappropriate as to such a claim. Again, that section states “[a]ny person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses shall be fined under title 18, United States Code, imprisoned for not more than 2 years, or both.” § 1681q. The entire basis for Plaintiff’s Motion for Summary Judgment is the patently false allegation that “Defendant has pulled Plaintiff’s credit report during litigation under false pretenses which is a violation of FCRA [§ 1681q]...” See Plaintiff’s Motion for Summary Judgment, at p. 1. Section 1681q of the FCRA criminalizes a person’s knowing and willful obtaining of information on a consumer from a consumer reporting agency under false pretenses.⁷ See § 1681q.

In order for Plaintiff to assert a valid § 1681q claim, AGFSA would have to 1) obtain Plaintiff’s credit report; 2) falsely represent that it was obtaining Plaintiff’s credit report for a permissible purpose; 3) while secretly using Plaintiff’s credit report for an impermissible purpose. See § 1681q. The facts simply do not provide support for a claim that AGFSA did any of these things. See Exhibit D at ¶ 9. In this case, there is no undisputed, material fact that shows AGFSA acted under false pretenses, or for any impermissible purpose, with regard to Plaintiff’s credit information.

1. Plaintiff’s §1681q Claim is Not Applicable to This Case.

Plaintiff has not submitted to the Court any admissible evidence that AGFSA 1) obtained his credit report; 2) under false pretenses; 3) for an impermissible purpose. See *Graziano v. TRW*,

⁷ A trial court can only consider admissible evidence in ruling on a motion for summary judgment. See Fed. R. Civ. P. 56(c); *Beyene v. Coleman Sec. Servs., Inc.*, 854 F.2d 1179, 1181 (9th Cir. 1988). Plaintiff’s Motion does not point to any specific facts indicating AGFSA obtained Plaintiff’s credit reports under “false pretenses”, other than his own self-serving affidavit. In that document, Plaintiff does nothing more than merely opine that “[d]efendant has once again pulled the Plaintiff’s credit report without any permissible purpose.” See Harris MSJ Aff., p. 1, lines 18-25. No other evidence is offered to support such a bald assertion. This statement is clearly hearsay and should be stricken by this Court, as Plaintiff cannot testify with personal knowledge as to whether AGFSA “pulled Plaintiff’s credit report,” much less that it did so without “any permissible purpose” or “under false pretenses.” See *Beyene*, 854 F.2d at 1181.

1
2 *Inc.*, 877 F. Supp. 53, 57 (D. Mass. 1995). Rather, Plaintiff has conflated the standard, and is
3 alleging AGFSA acted under “false pretenses” for properly updating the “disputed” status of
4 Plaintiff’s account. *See* Plaintiff’s Motion for Summary Judgment, at p. 1.

5 In *Graziano*, the Court concluded “that ‘false pretenses’ under 15 U.S.C. § 1681q requires
6 not merely a purpose which is not technically in compliance with the purposes set forth in 15
7 U.S.C. § 1681b, but a **calculated attempt to mislead another in order to obtain information.**”
8 *See Graziano*, 877 F. Supp. at 57 (emphasis added); *Veno v. AT&T Corp.*, 297 F. Supp. 2d 379,
9 385 (D. Mass. 2003). Here, there is simply no evidence, and certainly no undisputed material
10 fact, which shows that AGFSA engaged in a “calculated attempt to mislead another.” *See e.g.*,
11 Exhibit D at ¶ 9. Moreover, AGFSA’s reflection of Plaintiff’s account status as “disputed” is
12 merely a **reporting** function related to the furnishing of information, and not an effort to **obtain**
13 information for some improper purpose. Thus, § 1681q does not apply to AGFSA’s flagging of
14 Plaintiff’s account.

15 Even assuming, however, that the furnishing (out) of information somehow constitutes the
16 obtaining (in) of information, Plaintiff has not established, and cannot establish, that AGFSA did
17 so under false pretenses with an impermissible purpose. “[T]he standard for determining when a
18 consumer report has been obtained under false pretenses will usually be defined in relation to the
19 permissible purposes of consumer reports which are enumerated in 15 U.S.C. § 1681b.” *Hansen*
20 *v. Morgan*, 582 F.2d 1214, 1219 (9th Cir. 1978). Under § 1681b(a)(3)(A), it is proper for a
21 consumer reporting agency to furnish credit reports for the purposes of the “review or collection
22 of an account.” In the case at bar, Plaintiff was a customer of AGFSA, and AGFSA had the right
23 to “review” his account as needed for maintenance and collection purposes. *Id.*

24 In sum, AGFSA’s flagging of Plaintiff’s account as disputed simply does not fit the
25 recognized definition of “false pretenses” under § 1681q. *See Graziano*, 877 F. Supp. at 57.
26 Moreover, any review of Plaintiff’s account by AGFSA would have been authorized by
27 § 1681b(a)(3)(A) as related to the legitimate purpose of collecting the \$4,315.27 outstanding debt
28 that Plaintiff owes AGFSA. *See* Exhibit B. Finally, §1681q only concerns the illicit *obtaining* of

1
2 information, not the *furnishing* of information, and consequently cannot apply to AGFSA's
3 update of Plaintiff's account status. Thus, §1681q is irrelevant for a host of reasons and does not
4 apply to AGFSA's proper actions in this case.

5 2. Plaintiff's Motion Should be Denied Because There Are Disputed Material Facts
6 Which Preclude Summary Judgment.

7 AGFSA disputes material facts that are necessary elements of Plaintiff's §1681q claim.
8 Specifically, AGFSA did not "knowingly and willfully obtain information on a consumer from a
9 consumer reporting agency under false pretenses." *See* § 1681q. On the contrary, AGFSA is
10 required by law to provide accurate information about consumers, including the disputed status of
11 an account, to consumer reporting agencies. *See* 15 U.S.C. § 1681s-2(a)(1); Exhibit D at ¶ 7. If
12 an account status changes, AGFSA is required to update that information and to correct
13 erroneously reported information. This type of account update is a permissible purpose under the
14 FCRA. *See* 15 U.S.C. § 1681s-2(a)(2); Exhibit D at ¶ 7; *cf.* Plaintiff's UMF, ¶¶ 4, 5 (alleging no
15 permissible purpose).

16 In reporting that Plaintiff's account was in "dispute" to the credit reporting agencies,
17 AGFSA was simply complying with its responsibility under § 1682s-2(a)(1)(A) of the FCRA. *Id.*
18 Moreover, AGFSA's policy of flagging the account accomplishes the purpose of ensuring that the
19 account holder should not be contacted except through authorized channels. Exhibit C at ¶ 8.
20 Flagging an account as "disputed" is meant to stop collection efforts, including phone calls, to the
21 overdue account holder, which, ironically, protects Plaintiff from the very allegations which form
22 the basis of his Complaint. *Id.* at ¶ 8.

23 In short, AGFSA correctly marked the account in dispute because Plaintiff sued AGFSA.
24 In so doing, AGFSA was following the law and was not acting improperly or for any
25 impermissible purpose. *Id.* at ¶ 9. These disputed, material facts, supported by AGFSA's
26 countervailing affidavit are sufficient to defeat Plaintiff's Motion for Summary Judgment.

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C. Plaintiff Should Not be Permitted to Amend His Complaint to Add a §1681q Claim Because the Amendment Would Be Futile.

Setting aside the fact that it was never pleaded in Plaintiff's Complaint, any attempt to amend Plaintiff's Complaint to include the § 1681q claim would be futile, as the claim has no basis in fact or law. While it is true that leave to amend shall be freely given when justice so requires, the Court is required to be a gate keeper because the validity of the amendment must be examined. *See Fed. R. Civ. P. 15*. Courts may deny leave to amend if the proposed amendment would be futile. *See Leadsinger, Inc. v. BMG Music Publ'g*, 512 F.3d 522, 532 (9th Cir. 2008). Furthermore, "courts should be cautious of last-second amendments alleging meritless claims ... the proper method to deal with such tactics is to deny leave to amend on grounds of futility." *Soebbing v. Carpet Barn*, 109 Nev. 78, 84 (1993).⁸

A proposed amendment is futile if no set of facts can be proved under the amendment to the pleadings that would constitute a valid and sufficient claim or defense. *See generally* 3 J. Moore's Federal Practice 15.08[4] (2d ed.) (proper test to be applied when determining the legal sufficiency of a proposed amendment is identical to the one used when considering the sufficiency of a pleading challenged under Rule 12(b)(6)); *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Fed. R. Civ. P. 8 does not require the Complaint to give detailed factual allegations, it demands more than "labels and conclusions" or a "formulaic recitation of the elements of a cause of action." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). "Factual allegations must be enough to rise above the speculative level." *Twombly*, 550 U.S. at 555.

1. Plaintiff's §1681q Claim is Futile Because it Cannot Survive a Motion to Dismiss.

Under the futility standard, which is the same as a Fed R. Civ. P. 12(b)(6) analysis, Plaintiff has not demonstrated that he has alleged facts that can support his § 1681q claim. "As a general rule, a person is proceeding under [§1681q] false pretenses when she (1) knowingly and willfully obtains a consumer report for a purpose that is not sanctioned by the FCRA and (2) fails

⁸ The Nevada Rules of Civil Procedure are persuasive because they are based in large part upon their federal counterparts. *Executive Mgmt., Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 38 P.3d 872 (2002).

to disclose her true motivation to the consumer reporting agency.” *See Duncan v. Handmaker*, 149 F.3d 424, 426 (6th Cir. 1998).

As stated above, Plaintiff makes the conclusory allegation that AGFSA “pulled Plaintiff’s credit report during litigation under false pretenses which is a violation of the FCRA” on the first page of his Motion for Summary Judgment. However, Plaintiff’s bare allegation of “false pretenses” is merely a “formulaic recitation” of the statute’s language and is devoid of the “further factual enhancement” required—and, therefore, insufficient to survive dismissal—under Rule 12(b)(6). *See Iqbal*, 129 S. Ct. at 1949.

2. Plaintiff’s §1681q Claim is Futile Because Plaintiff’s Cannot Demonstrate that AGFSA’s Actions Were Improper.

Plaintiff fails to demonstrate that AGFSA obtained his credit report for an unsanctioned purpose under the FCRA, or that AGFSA lied to the consumer reporting agency about its true reason for marking his account as disputed. *See Duncan*, 149 F.3d at 426. Instead, Plaintiff relies upon his conclusory allegations and then erroneously cites to authority that does not apply to the facts in this case. *See Plaintiff’s Motion for Summary Judgment*, at pp. 1-2; *see e.g., Bils v. Nixon*, 880 P.2d 743 (Ariz. App. 1994) (law firm, a third party, impermissibly pulled a credit report of opposing party for use in child-visitation litigation).

Nowhere in Plaintiff’s cited cases is there discussion of a party properly reporting a disputed account to the consumer credit reporting agencies. Rather, Plaintiff’s cited authorities discuss third parties that nefariously access credit reports for some perceived leverage or advantage in litigation. *See id.* Thus, Plaintiff’s cited authorities never address the act of properly reporting an account’s disputed status to the credit bureaus, and are accordingly unhelpful to this Court.

In sum, Plaintiff’s argument that AGFSA’s act of placing a disputed flag on his account violates § 1681q is a blatant mischaracterization of the purpose and scope of §1681q. If Plaintiff were correct, then any account holder or lender could be sued (under this statute applicable to the obtaining of information from a consumer reporting agency via false pretenses) merely for

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2 abiding by its FCRA duty as a furnisher of information and reporting truthful information to the
3 credit reporting agencies. Such a scenario is as implausible as it is illogical. Consequently, any
4 attempt by Plaintiff to amend his Complaint to add a §1681q claim would be futile because it
5 could not survive a Rule 12(b)(6) motion to dismiss.

6 **D. Plaintiff's Threat of Criminal Sanctions In His Motion for Summary Judgment is**
7 **Illegal and Constitutes Extortion under Nevada Law.**

8 In Nevada, a party is guilty of extortion if, "with the intent to extort or gain any money or
9 other property or to compel or induce another to make, subscribe, execute, alter or destroy any
10 valuable security or instrument or writing affecting or intended to affect any cause of action or
11 defense," a party threatens directly or indirectly to accuse any person of a crime. *See* NRS
12 205.320.

13 Indeed, Plaintiff threatened AGFSA in his menacing undated letter to AGFSA's counsel,
14 stating:

15 I have given you a copy of the summary judgment that I will be filing on Monday
16 [arguing for criminal sanctions under §1681q] unless your client decides to come
17 to the table to reach some sort of an [sic] settlement in this matter. Please do not
take this lightly. I suggest you speak with your clients and encourage them to
settle this matter before Monday.

18 *See* Undated Letter from Timothy Harris to David W. Dachelet, attached hereto as **Exhibit F**.
19 Plaintiff followed through with his threat by asserting criminal penalties against AGFSA. *See*
20 Plaintiff's Motion for Summary Judgment at p. 2, lines 28-29; § 1681q. In fact, Plaintiff's
21 Motion expressly requests that AGFSA be subject to criminal penalties, up to and including
22 imprisonment for two years. *Id.*

23 For the foregoing reasons, AGFSA asks that this Court reject Plaintiff's efforts to
24 intimidate and threaten criminal sanctions against AGFSA by denying his Motion for Summary
25 Judgment.

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IV.

CONCLUSION

Plaintiff's Motion for Summary Judgment fails because: 1) Plaintiff never properly pleaded any claim asserting a violation of §1681q in his Complaint; 2) §1681q simply does not apply to AGFSA's alleged conduct; 3) Even had such a claim been properly pleaded and if it were applicable, the allegations present many disputed, material facts regarding AGFSA's conduct upon which summary judgment cannot be awarded against AGFSA as a matter of law; 4) Any attempt to amend the Complaint to allow Plaintiff to plead a claim under §1681q would be futile; and 5) Plaintiff's extortionary and illegal behavior must not be tolerated.

As such, Plaintiff's Motion for Summary Judgment should be denied pursuant to Fed. R. Civ. P. 56 and AGFSA should not be forced to endure any further wrongful retaliation for pursuing its rights to collect on Plaintiff's debt.

DATED this 16th day of December, 2010.

FENNEMORE CRAIG, P.C.

By: /s/ David W. Dachelet

DAVID W. DACHELET
Nevada Bar No. 6615
300 S. Fourth Street, Suite 1400
Las Vegas, Nevada 89101

*Attorneys for Defendant American General
Financial Services of America, Inc.*

CERTIFICATE OF SERVICE

On the 16th of December, 2010, I served the following document(s):

**DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT**

I served the above-named document(s) by the following means to the persons as listed below:

☐ **By ECF System** (or the "Notice of Electronic Filing" to all addressees):

☒ **By United States Mail**, postage fully prepared to persons and addresses as follows:

Timothy P. Harris
4005 Cherokee Rose Avenue
North Las Vegas, Nevada 89031-3685
Plaintiff In Pro Per

☐ **By Personal Service (to persons and addresses):**

☐ For a party represented by an attorney, delivery was made by handling the document(s) to the attorney or by leaving the document(s) at the attorney's office with a clerk or other person in charge, or if no one is in charge by leaving the document(s) in a conspicuous place in the office.

☐ For a party, deliver was made by handing the document(s) to the party or by leaving the document(s) at the person's dwelling house or usual place of abode with someone of suitable age and discretion residing there.

☐ **By Direct Email** (as opposed to through the ECF system (list persons and email addresses). Based upon the written agreement of the parties to accept service by email or a court order, I caused the document(s) to be sent to the persons at the email addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☐ **By Facsimile Transmission:** (list persons and fax numbers): Based upon the written agreement of the parties to accept service by fax transmission or a court order, I faxed the document(s) to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission is attached.

☐ **By Messenger:** I served the document(s) by placing them in an envelope or

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2 package addressed to the persons at the addresses listed below and providing them to a messenger
3 service. (A declaration by the messenger must be attached to this Certificate of Service).

4 I declare under penalty of perjury that the foregoing is true and correct.

5 DATED this 16th day of December, 2010.

6
7 /s/ Shirley May Martir-Ligot
8 An Employee of Fennemore Craig, P.C.
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